

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES E. BOST
Claimant

VS.

BOEING MILITARY AIRPLANES
Respondent

AND

AETNA CASUALTY & SURETY COMPANY
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 181,670

ORDER

On the 11th day of October, 1995, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on June 1, 1995, came regularly on for oral argument in Wichita, Kansas.

APPEARANCES

Claimant appeared by and through his attorney, Randy S. Stalcup of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Eric K. Kuhn of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Cortland Q. Clotfelter of Wichita, Kansas. There were no other appearances.

RECORD

The record as specifically set forth in the Award of the Administrative Law Judge is herein adopted by the Appeals Board.

STIPULATIONS

The stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant suffered injury by accident on the date alleged while employed by the respondent.
- (2) Whether claimant's accidental injury arose out of and in the course of his employment.
- (3) What, if any, is the nature and extent of claimant's injury and/or disability?
- (4) The average weekly wage of claimant.
- (5) Whether claimant is entitled to or in need of future medical and/or authorized medical treatment.
- (6) Whether all or a portion of this Award should be assessed against the Kansas Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant, a general assembly installer mechanic "b", suffered injury while working for respondent on June 3, 1993, with said injury arising out of and in the course of his employment. Claimant testified, and this testimony is basically uncontradicted by the respondent, that while walking through oily water, claimant slipped and fell, grabbing a door to keep from hitting his head on the concrete. Claimant reported the accident to his supervisor, and to Boeing Central Medical and was referred to Dr. Robert Eyster, a board-certified orthopedic surgeon. Dr. Eyster treated claimant for a period of time returning him to work on June 24, 1993, with no functional impairment and no restrictions.

In August 1993, while at home, claimant bent over to pick up a bucket, experiencing a sudden onset of pain in his low back. Subsequent to the August 1993 incident, claimant returned to Dr. Eyster, who diagnosed a degenerative disc condition, which pre-dated both the August incident at home and claimant's work-related injury on June 3, 1993. Dr. Eyster assessed claimant at a six percent (6%) whole body functional impairment and restricted him from single lifting of seventy-five (75) pounds with occasional repetitive lifting of approximately twenty-five (25) pounds with no bending or twisting. Dr. Eyster testified claimant had a pre-existing degenerative disc condition which was temporarily made symptomatic in June 1993 while employed at Boeing and later again made symptomatic as a result of the August 1993 incident at home. Dr. Eyster stated claimant had no permanent impairment as a result of the June 3, 1993 incident at work and saw no connection between the June injury and the August 1993 incident.

Claimant was also examined by Dr. Kenneth Zimmerman, a full-time staff physician in the medical department of Boeing. Dr. Zimmerman examined claimant on June 3, 1993 and on several occasions through June 23, 1993. At that time, he found claimant's back pain to have resolved and claimant was released to return to work with the only restriction being an old E5 limitation which stems from a prior C7-

T1 injury suffered by claimant. Dr. Zimmerman testified that claimant was provided no functional impairment and no work limitations as a result of the June 3, 1993 incident. It was noted a Form 88 was not filed by Boeing as a result of this incident. Dr. Zimmerman felt that the August 1993 incident was a separate and distinct new injury to claimant's low back, with no association to the June 3, 1993 injury.

Claimant was examined by Dr. Dennison R. Hamilton at the request of claimant's attorney on August 10, 1994. Dr. Hamilton assessed claimant a twenty-four percent (24%) permanent partial whole body functional impairment, finding a relation between the August 1993 incident and the injury suffered June 3, 1993 while at Boeing.

In proceedings under the Workers Compensation Act, it is the claimant's burden to prove by a preponderance of the credible evidence all of the conditions upon which claimant's right depends. See K.S.A. 44-501 and K.S.A. 44-508(g).

When a primary injury, under the Workers Compensation Act, arises out of and in the course of employment, every natural consequence that flows from the injury is compensable if it is a direct and natural result of the primary injury. See Jackson v. Stevens Well Service, 208 Kan. 637, 493 P.2d 264 (1972). However, the mere fact that someone experiences increased symptomatology after an initial work-related accident does not automatically entitle the injured worker to additional benefits under the Workers Compensation Act absent a showing of a relationship between the initial injury and the subsequent aggravation. A claimant is not entitled to benefits for increased disability resulting from a new and distinct injury, not related to the initial incident. See Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P.2d 697 (1973).

In this instance, an asymptomatic claimant was returned to work by Dr. Eyster on June 24, 1993. Claimant received no medical treatment between then and the incident of August 23, 1993. The Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment on August 23, 1993 and has further failed to prove the incident on August 23, 1993 is a natural and probable consequence of the incident occurring on June 3, 1993.

The Appeals Board finds claimant has proven by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on June 3, 1993, with said incident being temporary only. As such, claimant is entitled to temporary total disability compensation and medical benefits associated with same. The Appeals Board further finds claimant is not in need of additional medical treatment as a result of that incident.

No liability is found against the Kansas Workers Compensation Fund, but the Appeals Board does find that the Workers Compensation Fund shall be responsible for its own attorney's fees in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that an award of compensation is herein granted in favor of the claimant, James E. Bost

and against the respondent, Boeing Military Airplanes and its insurance carrier, Aetna Casualty & Surety Company, for an accidental injury occurring on June 3, 1993. Claimant is entitled to 3 weeks temporary total disability compensation at the rate of \$299.00 per week in the amount of \$897.00, all of which is due and owing to claimant and ordered paid in one lump sum less any amounts previously paid. Additional award to claimant for future medical benefits and permanent partial disability is, herein, denied.

Claimant is awarded unauthorized medical up to \$350.00 upon presentation of an itemized statement and verification of same.

Claimant's contract of employment with his attorney is approved, insofar it is not in contravention of the language of K.S.A. 44-536.

Liability against the Kansas Workers Compensation Fund is, herein, denied. The Workers Compensation Fund shall be responsible for its own attorney's fees.

Fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are, hereby, assessed against the respondent and its insurance carrier to be paid as follows:

Barber & Associates	
Transcript of Preliminary Hearing	\$129.75
Transcript of Regular Hearing	\$172.65
Total	\$302.40
 Deposition Services	
Deposition of Kenneth Zimmerman, M.D.	\$164.20
 Don K. Smith & Associates	
Deposition of Karen Terrill	\$246.25
Deposition of Robert Eyster, M.D.	\$230.50
Total	\$476.75
 Gene Dolginoff Associates, Ltd.	
Deposition of Dennison Hamilton, M.D.	\$284.35
 Satterfield Reporting Services	
Deposition of Jerry Hardin	\$199.00

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Randy S. Stalcup, Wichita, Kansas
 Eric K. Kuhn, Wichita, Kansas
 Cortland Q. Clotfelter, Wichita, Kansas
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director